BOOKS AND PERIODICALS.

TRADERS' AND LABORERS' COMPETITION DISTINGUISHED. — In its sudden expansion to meet the complexities of modern conditions, the law of business competition has elaborated on old principles. Competition pursued with fraud, disparagement, or coercion has always been actionable. See 15 HARV. L. REV. 427, 440. A recent writer has collected cases of competition arising out of acts done by combinations of individuals which would clearly not be actionable if done by single individuals; and he has drawn attention to the apparent tendency of the courts to make combination actionable in cases of laborers' competition, and in cases of traders' competition to hold combination lawful. *The Laborer and the Law*, by N. W. Hoyles, 23 Can. L. T. 11 (Aug. 1903). One class of cases collected by the writer holds that laborers are guilty of tort who combine and by boycott induce persons not to enter into contracts with hostile employers or laborers. *Temperton* v. *Russell*, [1893] 1 Q. B. 715; *Quinn* v. *Leathem*, [1901] A. C. 495; *Giblan* v. *National Amalgamated Laborers Union*, 18 T. L. R. 500. Other cases cited by Mr. Hoyles hold that traders may combine and by means of lowered prices drive a rival from the business. These latter cases rely on the principle that competition by lowering prices is legitimate business practice, and that what is allowable to one is allowable to several in combination. *Mogul Steamship Company* v. *McGregor*, 23 Q. B. D. 598. This apparent divergence between the law of laborers' competition and the law of traders' competition has already been noticed by other writers. 12 *Law Quart. Rev.* 5-7, 201. CLERKE & LIND., TORTS, 2nd ed., 23.

It may be better to study this question from another standpoint. Accepting the general doctrine that competition pursued with fraud, disparagement, or coercion is actionable, one may avoid deciding whether combination be added to this list. Instead, disregarding the element of combination, this explanation rests upon the proposition that any act, either by an individual or by a combination, depriving an employer of a customer or laborer, or dissuading an employer from employing a workman, is *prima facie* tortious. *Morasse* v. *Brochu*, 151 Mass. 567; *Delz* v. *Winfree*, 80 Tex. 400. This is upon the well-recognized theory of torts that intentional temporal damage is actionable unless justified. See 8 HARV. L. REV. 1, 9. It becomes necessary, then, to determine how far the law considers competition sufficient justification. *Mogul Steamship Company* v. *McGregor* shows a *prima facie* tort justified by trade competition; while *Temperton* v. *Russell* shows a *prima facie* tort unjustified by the self-aggrandizement of combined labor. For this distinction a sufficient reason is suggested in the cases. In the competition of prices among traders, the pressure is direct between the competing parties: customers and third persons suffer no pressure from the lowering of prices. The allurement of lowered prices is a means of competition emphatically favored by the law. *Two Masters at Gloucester*, Y. B. 11 Hen. IV, folio 47, placit. 21. The pressure exerted in laborers' competition, however, bears first upon third persons and only indirectly upon the rival laborers. Customers who are dissuaded from dealing with hostile employers, and employers who are dissuaded from employing the competing laborer — as in a boycott — bear the brunt of competition, instead of the competing laborers themselves. In the view of Mr. Justice Holmes, however, competition by either combined laborers or traders is sufficient justification, so long as it is free from fraud, disparagement, and coercion. *Vegelahn* v. *Guntner*, 167 Mass. 92, 104 (dissenting opinion). But the rule which distinguishes between direct and indirect competition both harmonizes the cases and also agrees with the current economic notions and the prevailing

sense of the business community. *Reinecke Coal Mining Company* v. *Wood*, 112 Fed. Rep. 477; *Quinn* v. *Leathem*, [1901] A. C. 495, 539. Traders' and laborers' competition are both *prima facie* tortious; but since self-advancement is essential in business, that competition which damages the least possible number — namely, the competitors' immediate rivals — may well be held sufficient justification; while competition affecting others than the competitors' immediate rivals is insufficient.

RIGHTS OF ELECTRIC INTERURBAN RAILWAYS TO USE PUBLIC HIGHWAYS. — The law is settled that where an abutter upon a highway retains the fee of the soil over which the highway runs, the public possesses merely an easement. In view of the rapid growth of interurban electric railways the extent of the right in the public to use the highways without compensation to the abutters becomes at once interesting and important. Very similar questions arose when gas and water pipes, telephone poles, and car tracks were first placed in the streets. All were departures from the previous uses of the public easement. A recent and instructive article has suggested that one general rule should be applied to all these new uses, either in city streets or country roads. *Extent of the Public Easement in Country Highways*, by Henry M. Dowling, 57 Central L. J. 225 (Sept. 18, 1903). The rule suggested is that any new use in order not to be an additional burden must be a local convenience fairly commensurate with the damage inflicted, and must not materially interfere with communication by travel. If this test is not satisfied compensation must be made to abutters.

Some rule must be found to cover the rights of interurban railways. It is decided in most states that steam commercial roads are added burdens. *Adams* v. *Chicago, etc., Co.*, 39 Minn. 286. Street passenger roads are not ordinarily held to be additional servitudes. *West Jersey R. Co.* v. *Camden Co.*, 52 N. J. Eq. 31. No test should be adopted that will shake these decisions on account of the vested interests dependent on them. A test based on motive power alone would not be supported by logic or the decisions. *Newell* v. *Minneapolis, etc., Co.*, 35 Minn. 112; *Rische* v. *Texas Transp. Co.*, 66 S. W. Rep. 324 (Tex.). Some courts have appealed in deciding questions of this character to what they call "the terms of the original grant." This test, however, would appear to be in great part a fiction, since in most cases a telephone pole or gas pipe was just as far from the mind of the grantor as a steam commercial railroad. The test proposed in the article is better in that it is free from legal presumption and accords with decided cases.

Interurban railways occupy a place between commercial roads and street passenger lines. In which class they should fall, will often be difficult to determine. The decision of a given case should depend on the nature of the service which the road under discussion renders. If it is essentially a street passenger road in business and equipment, catering to local traffic, even though the cars run for several miles into the country, it would not appear to be an added burden. *Ehret* v. *Camden, etc., Co.*, 61 N. J. Eq. 171. The general arguments originally made in favor of street railways apply. On the other hand, if the business done is truly interurban, the passengers carried being almost entirely those that formerly rode on steam cars, the arguments used against steam roads would be in point. The fact that a car stops at several places within a city increases the local service rendered but does not alone determine the question, since steam railroads often do the same. The size and speed of interurban cars, and the freight handled make the true interurban railway exceedingly like the ordinary commercial road. The resemblance is especially strong on those lines which run limited cars making but few stops. The street passenger business is a very small part of their traffic. Such a road has properly been held to impose an additional servitude on a country road. *Pa. Co.* v. *Montgomery Co.*, 167 Pa. St. 62; *Schaaf* v. *Cleveland, etc., Co.*, 66 Oh. St. 215. One case has reached the same result as to